

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SPEARMAN CORPORATION
MARYSVILLE DIVISION and SPEARMAN
CORPORATION KENT DIVISION,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

CASE NO. C20-13RSM

ORDER GRANTING
DEFENDANT'S PARTIAL MOTION
TO DISMISS CPA CLAIM

I. INTRODUCTION

This matter comes before the Court on Defendant Boeing's Motion for Partial Dismissal of Plaintiffs' Amended Complaint under Rule 12(b)(6). Dkt. #49. Plaintiffs oppose. Dkt. #50. The Court has determined that oral argument is unnecessary. For the reasons stated below, the Court GRANTS Boeing's Motion and dismisses Plaintiffs' Consumer Protection Act claim.

II. BACKGROUND

For purposes of these Motion to Dismiss, the Court will accept all facts in the Amended Complaint, Dkt. #47, as true. The Court will briefly summarize only those facts necessary for ruling on this very limited partial Motion to Dismiss.

1 This case arises out of disputes concerning aerospace supplier contracts. Defendant
 2 Boeing is a leading manufacturer of commercial jetliners, defense, space and security systems,
 3 and there is significant competition among aerospace suppliers for Boeing work.

4 From 1988 through 2002, Alex Spearman worked closely with Boeing in his executive
 5 role for an aerospace parts manufacturing company called QPM Aerospace. He formed
 6 Spearman Corporation in 2013 and began obtaining certifications and approvals necessary to
 7 supply aircraft parts to Boeing. Plaintiffs obtained their first Boeing award on January 18,
 8 2016, and received a General Terms Agreement (GTA) and Special Business Provisions (SBP)
 9 agreement from Boeing on or about February 1, 2016. Through the next several years,
 10 Plaintiffs had various contractually-based dealings with Boeing to supply parts. The
 11 relationship eventually soured, leading to the termination of these contracts and the underlying
 12 allegations of Plaintiffs' claims, the majority of which need not be discussed at this time.

13 This action was filed on December 23, 2019, in King County Superior Court, Dkt. #1-1,
 14 and removed to this Court on January 3, 2020, Dkt. #1. Plaintiffs' Amended Complaint brings
 15 claims for declaratory judgment, breach of contract, breach of the duty of good faith and fair
 16 dealing, and for violations of the Washington State Consumer Protection Act ("CPA"). Dkt.
 17 #47. The CPA claim in particular was amended after Boeing filed a partial Motion to Dismiss
 18 that claim. *See* Dkt. #17.

19 Plaintiffs' amended CPA claim alleges that:

20 ...[W]hen Spearman submitted termination claims to Boeing,
 21 Boeing engaged in each of the following unfair and deceptive
 business practices, which practices Boeing engages in with respect
 to most (if not all) of its suppliers,

- 22 a. It is Boeing's practice to withhold consideration of claim
 payment for an unreasonable period of time, creating financial
 23 pressure for suppliers;
- 24 b. It is Boeing's practice to refuse payment of documented and
 supported claim amounts, in part or in whole, such that

suppliers have no meaningful choice but to accept lesser amounts;

- c. It is Boeing's practice to then refuse payment of any claim (whether the total or a lesser amount) until its supplier signs Boeing's pro forma Termination Claim Settlement Agreement, the terms of which Boeing also does not comply with as a matter of practice; and
- d. In the event of a later supplier complaint or dispute, it is Boeing's practice to discourage its supplier to pursue their legal remedies by, among other things, characterizing Termination Claim Settlement Agreements as a complete and unilateral waiver of all supplier claims.

Dkt. #47 at 29–30. The Amended Complaint does not include any allegations of these practices having occurred to any other specific suppliers. Plaintiffs go on to allege:

Boeing engages in other unfair and deceptive practices to discourage suppliers from pursuing valid claims against Boeing. For example,

- a. Boeing demands that its supplier contracts include pro forma provisions that purport to provide Boeing with excessive and unwarranted discretion and extensive and non-exclusive remedies (*see, e.g., infra*, ¶ 132.d).
- b. Boeing then creates a record that purports to document large claims against suppliers by declaring unwarranted defects and/or events of default that ignore specific circumstances such as reasonableness, mutual intent, agreement of the parties, and Boeing's own actions or inactions that increase or cause Boeing to incur alleged additional costs.
- c. Boeing typically does nothing with its claim allegations unless and until a supplier attempts to assert its own legal rights as against Boeing, at which time Boeing responds by unilaterally offsetting amounts undisputedly owed to its supplier based on Boeing's non-meritorious claim, or by threatening its supplier with countersuit.
- d. To maximize its negotiating leverage and to conceal the weakness of its "counterclaims," Boeing then goes to extensive lengths to prevent the supplier from ascertaining the basis of these claims, including, for example, refusal to provide that information in the context of informal negotiations and, even after suit is filed, refusing to share critical information about them. *See Leonardo, S.P.A. v. The Boeing Company*, Western District of Washington, Cause No. 2:19-cv-2082 (filed December 23, 2019) (alleging these same types of practices by Boeing).

1 *Id.* at 30–31. The CPA claim states, without further support, that “hundreds if not thousands of
 2 Washington companies have been and continue to be harmed” by the above practices and that
 3 “Boeing’s practices with regard to suppliers are a matter of public importance.” *Id.* at 31.
 4 Plaintiffs contend that Washington itself has an interest in the dealings of Boeing given the
 5 scope of its business in the state. *Id.*

6 Boeing filed the instant Motion on May 28, 2020, seeking to dismiss only Plaintiffs’
 7 CPA claims, in part because they fail to adequately satisfy the public interest requirement for
 8 such claims. Dkt. #49. Boeing, referring to the *Leonardo* case above, asserts that the “only
 9 company other than Spearman that Plaintiffs have identified as facing these allegedly-
 10 ubiquitous practices of public importance to Washington state is a Italian multinational defense
 11 contractor whose suit against Boeing does not reference termination claims or allege that
 12 Boeing took any action to discourage it from pursuing legal claims against Boeing.” *Id.* at 5.

13 III. DISCUSSION

14 A. Legal Standard under Rule 12(b)(6)

15 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
 16 true, and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
 17 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
 18 However, the court is not required to accept as true a “legal conclusion couched as a factual
 19 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 20 550 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as
 21 true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met
 22 when the plaintiff “pleads factual content that allows the court to draw the reasonable inference
 23 that the defendant is liable for the misconduct alleged.” *Id.* The complaint need not include
 24

1 detailed allegations, but it must have “more than labels and conclusions, and a formulaic
2 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent
3 facial plausibility, a plaintiff’s claims must be dismissed. *Id.* at 570.

4 Where a complaint is dismissed for failure to state a claim, “leave to amend should be
5 granted unless the court determines that the allegation of other facts consistent with the
6 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-*
7 *Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

8 **B. Analysis of CPA Claim**

9 “To prevail in a private [Consumer Protection Act] claim, the plaintiff must prove (1) an
10 unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public
11 interest, (4) injury to a person’s business or property, and (5) causation.” *Panag v. Farmers Ins.*
12 *Co. of Washington*, 166 Wn.2d 27, 204 P.3d 885, 889 (2009) (citing *Hangman Ridge Training*
13 *Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 786, 719 P.2d 531 (1986)). The Court will
14 focus primarily on the public interest prong because this is the most important element
15 distinguishing Plaintiffs’ CPA claim from its remaining contractual claims.

16 Boeing points out that the Amended Complaint has “150-plus paragraphs of allegations”
17 about how Plaintiffs were singled out for unfair treatment by Boeing, then they “tack-on, as
18 speculative after-thoughts, a few paragraphs declaring that Boeing treats all suppliers unfairly in
19 ways that harm the public at large.” Dkt. #49 at 7. Boeing maintains that “[t]his is a breach of
20 contract case—a supplier dispute—and ‘[o]rdinarily, a breach of a private contract affecting no
21 one but the parties to the contract is not an act or practice affecting the public interest.’” *Id.*
22 (citing *Hangman Ridge*, 719 P.2d at 538)). Boeing argues that to satisfy the public interest
23 prong, there must be a “likelihood that additional plaintiffs have been or will be injured in
24 exactly the same fashion.” *Id.* (citing *Hangman Ridge*, 719 P.2d at 538).

1 The Court agrees with Boeing that Plaintiffs have failed to allege, with respect to their
2 CPA claims, how other suppliers have been or will be injured in the same way. The CPA
3 allegations with regard to other suppliers are speculative and conclusory, and often just circle
4 back to the allegations of Boeing's dealings with Plaintiffs in this case. Furthermore, the Court
5 does not agree that aerospace suppliers are representative of the public at large for purposes of
6 satisfying the public interest prong. The Court would typically consider the following factors in
7 a contract case with an added CPA claim: (1) whether the alleged acts were committed in the
8 course of defendant's business; (2) whether the defendant advertised to the public in general; (3)
9 whether the defendant actively solicited this particular plaintiff, indicating potential solicitation
10 of others; and (4) whether the plaintiff and defendant have unequal bargaining positions.
11 *Hangman Ridge*, 719 P.2d at 538. The Amended Complaint fails to adequately plead that
12 Boeing "advertised to the public in general" with regard to the conduct at issue or that
13 "defendant actively solicited this particular plaintiff" rather than just supported the growth of
14 Plaintiffs' business.

15 Boeing is correct that the previous "150-plus paragraphs" generally paint a picture that
16 Plaintiffs were singled out for unique treatment. *See, e.g.*, Dkt. #47 at 16 ("Spearman believes
17 that it is the only Boeing supplier to ever be terminated by Boeing due to these types of
18 reporting issues.") and at 18 ("The January 30, 2018 letter is not typical of how Boeing treats its
19 suppliers in these types of circumstances..."). Taking these allegations as true, the pleading
20 then cannot demonstrate a substantial likelihood that other suppliers "will be injured in exactly
21 the same fashion." *Hangman Ridge*, 719 P.2d at 538.

22 In Response to this Motion, Plaintiffs take issue with several of Boeing's arguments but
23 do not directly address the above problems with their pleading. To the extent that Plaintiffs
24 attempt to show how Boeing's bad practices with suppliers are widespread by relying on new

1 declarations outside the pleadings, this does not cure the problem with the pleading. *See* Dkt.
 2 #50 at 11 (“Aerospace manufacturing is an incredibly complicated and precise process, and
 3 Boeing itself causes the majority of supplier issues. *See, e.g.,* Nguyen Decl. at ¶ 6 (‘...suppliers
 4 can take a hit in Boeing quality and delivery ratings when problems happen because of what
 5 Boeing has done’); Spearman Decl., ¶¶ 52-54, Ex F (admitted Boeing errors)’). These new
 6 allegations could have been included in Plaintiffs’ amended complaint but were not, and in any
 7 event do not alter the Court’s above conclusions.

8 The Court finds that, even after amendment, Plaintiffs fail to allege sufficient factual
 9 matter, accepted as true, to state a claim for relief under the CPA. This claim will thus be
 10 dismissed without further leave to amend, and the Court need not address Boeing’s many other
 11 issues with the CPA claim.

12 IV. CONCLUSION

13 Having reviewed the relevant pleadings and the remainder of the record, the Court
 14 hereby finds and ORDERS that Boeing’s Motion for Partial Dismissal of Plaintiffs’ Amended
 15 Complaint under Rule 12(b)(6), Dkt. #49, is GRANTED. Plaintiffs’ CPA cause of action is
 16 DISMISSED.

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 18 DATED this 14th day of January, 2021.

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 21 

22 RICARDO S. MARTINEZ
 23 CHIEF UNITED STATES DISTRICT JUDGE
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